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13 *Robert L. Leberman*

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

12 KPG INVESTMENTS INC., a Nevada
13 corporation; KENDALLE GETTY, an individual,

Case No.:
3:22-cv-00236-ART-CLB

14 Plaintiffs,

15 v.

16 MARLENA SONN, an individual; AND DOES
17 1-20,

18 Defendant.

19 MARLENA SONN,

Consolidated with:
3:22-cv-00323-ART-CLB

20 Plaintiff,

21 v.

22 KENDALLE P. GETTY, as Trustee of the
23 Pleiades Trust and as an individual, KPG
24 INVESTMENTS, INC., as Trustee of the
25 Pleiades Trust, ALEXANDRA SARAH
26 GETTY, as Trustee of the Pleiades Trust and as
27 an individual, ASG INVESTMENTS, INC., as
28 Trustee of the Pleiades Trust, MINERVA
OFFICE MANAGEMENT, INC., and
ROBERT L. LEBERMAN,

Defendants.

MOTION TO VACATE
SETTLEMENT CONFERENCE

Defendants MINERVA OFFICE MANAGEMENT, INC. (“Minerva”), and ROBERT L. LEBERMAN (“Leberman”), by and through their counsel of record, Mark H. Gunderson, Esq. and Austin K. Sweet, Esq., move to vacate the settlement conference currently scheduled to occur on November 16, 2022 and order the parties to either: (1) cooperate in good faith to reschedule the settlement conference at the earliest date that is mutually convenient for all parties and either Magistrate Judge McQuaid or any another Magistrate Judge whose schedule may be more aligned with the parties’ availability; or (2) participate in a private mediation, with all parties to equally share the costs. This Motion is made and based upon the following memorandum of points and authorities, the attached exhibits, and any oral argument this Court wishes to entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

All parties to this consolidated action agreed to participate in an early settlement conference. The settlement conference was originally scheduled to proceed on September 6, 2022, but was subsequently vacated and rescheduled to November 16, 2022. Plaintiff Marlena Sonn then unequivocally notified the Court and all parties that she was not available on November 16, 2022. The parties therefore spent substantial time and energy trying to accommodate Ms. Sonn’s schedule by finding an alternative option for the settlement conference, including alternate dates, requesting assignment to a different Magistrate Judge whose calendar might align better with the parties’ calendars, or engaging in private mediation. Meanwhile, given Ms. Sonn’s unequivocal statements that she was unavailable on November 16, 2022, Mr. Leberman scheduled an international business trip over November 16, 2022.

In the midst of their efforts to reschedule the settlement conference, Ms. Sonn informed the parties that her calendar had changed and that she was now available on November 16, 2022. Unfortunately, that date was no longer available for Minerva or Leberman. Nonetheless, Ms. Sonn informed the parties that, since she was now available on November 16, 2022, she would no longer engage in good faith efforts to reschedule the settlement conference. As a result, Minerva and Leberman are forced to file this Motion.

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Minerva and Leberman are not available to participate in a settlement conference on November 16, 2022. Minerva and Leberman therefore request that voluntary settlement conference be vacated and the parties be ordered to either: (1) cooperate in good faith to reschedule the settlement conference at the earliest date that is mutually convenient for all parties and either Magistrate Judge McQuaid or any another Magistrate Judge whose schedule may be more aligned with the parties' availability; or (2) participate in a private mediation, with all parties to equally share the costs.

II. RELEVANT FACTUAL HISTORY

Litigation was initiated in this action on March 17, 2022, in *KPG Investments, Inc. and Kendalle Getty v. Marlena Sonn*, Case No. CV22-00444 filed in the Second Judicial District Court of the State of Nevada. Doc. # 16. On May 11, 2022, Marlena Sonn filed *Marlena Sonn v. Kendalle P. Gett, et al.*, Case No. 2:22-cv-01137-APG-BNW in the United State District Court for the Eastern District of New York. Id. Ultimately, the parties stipulated to consolidate these lawsuits into the District of Nevada, to participate in a settlement conference, and to stay all proceedings pending the resolution of that settlement conference. Doc. # 13.

Between August 2, 2022, and August 5, 2022, the parties diligently coordinated with the Court to find a mutually acceptable date for the settlement conference. See August 2022 email chain, attached as Exhibit "1." The parties ultimately agreed to hold the settlement conference on September 6, 2022. On August 5, 2022, this Court entered an *Order Scheduling Virtual Settlement Conference*. Doc. # 19. Magistrate Judge Carla Baldwin was set to preside over the settlement conference. Id.

On August 9, 2022, the Court entered a minute order vacating the settlement conference set for September 6, 2022, before Magistrate Judge Carla Baldwin and informing the parties that counsel will be contacted by the Court to reschedule the settlement conference before Magistrate Judge McQuaid. Doc. # 20.

On August 15, 2022, the Court informed all parties via email that Magistrate Judge McQuaid was available on September 6, 2022, so the settlement conference would still proceed as scheduled. See August 15 email, attached as Exhibit "2."

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1 On August 16, 2022, this Court entered an *Order Setting Settlement Conference*, formally
2 setting Magistrate Judge McQuaid to preside over the settlement conference on September 6, 2022.
3 Doc. # 21.

4 On August 19, 2022, counsel for Kendalle Getty and KPG Investments, Inc., informed the
5 parties and the Court that, when the prior settlement conference was vacated, that date was rebooked
6 and Kendalle Getty, KPG Investments, Inc., and their counsel were no longer available to conduct
7 the settlement conference on September 6, 2022. See August 2022 email chain, attached as Exhibit
8 “3.” The Court responded by providing several other dates in September in which Magistrate Judge
9 McQuaid was available for the settlement conference. Id. Between August 19, 2022, and August 30,
10 2022, the parties and the Court exchanged a series of emails attempting to find a mutually acceptable
11 date to conduct the settlement conference. Id.

12 On August 30, 2022, the Court informed the parties that it would reschedule the settlement
13 conference before Magistrate Judge McQuaid for Wednesday, November 16, 2022. Id. Agatha Cole,
14 counsel for Marlena Sonn, responded to the Court’s email with a question about the electronic court
15 filing system, but gave no indication that she or her client were not available on November 16, 2022.
16 Id. This Court subsequently entered a minute order formally vacating the September 6, 2022,
17 settlement conference and rescheduling the settlement conference for November 16, 2022. Doc. #
18 23.

19 On September 1, 2022, Ms. Cole emailed the Court and explained that she and Ms. Sonn were
20 not available on November 16, 2022, for the settlement conference. See September 1 email, attached
21 as Exhibit “4.”

22 The parties then began discussing alternative options for conducting the settlement
23 conference. Counsel for the parties began by trying to schedule a conference call to discuss available
24 dates. See Emails from September 1 and 2, attached as Exhibit “5.” Ms. Cole responded that she did
25 not believe a phone call would be necessary because her client “is available any day in November
26 except for 11/16 and 11/17.” Id.

27 The parties then attempted to circulate available dates via email. See Email chain attached as
28 Exhibit “6.” Ms. Cole again responded by stating “Ms. Sonn and her counsel are fully available on

1 literally any day in November *except* for 11/16 and 11/17. Those are the only two dates that we
2 would not be able to attend.” Id (emphasis in original).

3 The parties’ efforts continued into the following week. On September 6, 2022, counsel
4 circulated a table of all the dates in November that the parties had indicated they were available,
5 which plainly showed that there were no dates on which all parties and Magistrate Judge McQuaid
6 were available in November 2022. See September email chain, attached as Exhibit “7.” At that point,
7 the parties began discussing the possibility of scheduling the mediation after November 2022,
8 requesting the availability of another magistrate judge to conduct the settlement conference, or
9 considering private mediation. Id. The parties continued exploring available dates or private
10 mediation for several more days. Id.

11 At no point did Ms. Cole indicate that November 16 might become available or that they were
12 attempting to rearrange their schedules to make November 16 available. Id. Minerva and Leberman
13 therefore understood that the settlement conference would be rescheduled, that November 16 was not
14 a date that needed to be held open, and that Mr. Leberman could freely schedule other matters for
15 that date. See Declaration of Robert Leberman, attached as Exhibit “8.” Accordingly, while the
16 parties continued to work toward rescheduling the settlement conference, Mr. Leberman confirmed a
17 pending international business meeting on November 16, 2022. Id.

18 On Sunday, September 11, 2022, Ms. Sonn’s counsel unexpectedly informed the parties that
19 their “calendar has changed” and that they were now available on November 16, 2022. See
20 September 11, 2022, email, attached as Exhibit “9.” Unfortunately, by this point, given Ms. Cole’s
21 clear and repeated statements that she was unavailable on November 16, 2022, Mr. Leberman
22 confirmed a pending international business meeting that day that cannot now be moved. See Exhibit
23 “9.” Counsel for Minerva and Leberman promptly informed the parties that November 16 was no
24 longer available on their calendar. See Gunderson email on September 11, 2022, attached as Exhibit
25 “10.”

26 On September 14, 2022, Minerva and Leberman’s counsel informed the Court that November
27 16, 2022, was no longer available for Minerva or Leberman. See Gunderson email dated September
28 14, 2022, attached as Exhibit “11.”

1 On September 20, 2022, Minerva and Leberman's counsel followed up with the parties on the
 2 ongoing efforts to set the settlement conference. See Gunderson email dated September 20, 2022,
 3 attached as Exhibit "12." Mr. Gunderson suggested seeking assignment to a different Magistrate
 4 Judge or holding a private mediation. Id. On September 22, 2022, Ms. Sonn's counsel responded as
 5 follows: "The mediation is scheduled for Nov. 16, and seeing that your clients could not agree on any
 6 other alternate date, we were forced to rearrange our schedules to accommodate the Nov. 16 date. I
 7 suggest you do the same." Id.

8 Ms. Cole then asked the Court to unilaterally pick a date and mandate all parties' attendance.
 9 See September 22, 2022, email chain, attached as Exhibit "13." Mr. Gunderson responded that
 10 Minerva and Leberman could not agree to such a process and requested that this matter either be
 11 referred to another Magistrate Judge whose calendar might better align with the parties' availability
 12 or order the parties to engage in private mediation. Id. This Court responded that if the scheduled
 13 date is no longer available, a motion should be filed. Id.

14 **III. ARGUMENT**

15 This voluntary settlement conference was set pursuant to the parties' stipulated request in
 16 accordance with LR II 16-5. Unfortunately, due to the numerous, constantly evolving schedules that
 17 must be coordinated for this settlement conference to occur, scheduling the settlement conference has
 18 been a difficult process. Minerva and Leberman remain interested in an early mediation of this case,
 19 but they are simply unavailable on November 16, 2022.

20 Efforts to reschedule the settlement conference without judicial intervention have failed.
 21 Consequently, Minerva and Leberman are left with no choice but to request that the voluntary
 22 settlement conference be vacated and the parties be ordered to either: (1) cooperate in good faith to
 23 reschedule the settlement conference at the earliest date that is mutually convenient for all parties and
 24 either Magistrate Judge McQuaid or any another Magistrate Judge whose schedule may be more
 25 aligned with the parties' availability; or (2) participate in a private mediation, with all parties to
 26 equally share the costs.

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1 **IV. CONCLUSION**

2 A productive settlement conference cannot occur unless all parties participate. Minerva and
 3 Leberman are not available on November 16, 2022. Minerva and Leberman therefore request that
 4 voluntary settlement conference be vacated and the parties be ordered to either: (1) cooperate in good
 5 faith to reschedule the settlement conference at the earliest date that is mutually convenient for all
 6 parties and either Magistrate Judge McQuaid or any another Magistrate Judge whose schedule may
 7 be more aligned with the parties' availability; or (2) participate in a private mediation, with all parties
 8 to equally share the costs.

9 The Motion should be granted.

10 DATED this 30 day of September, 2022.

11 GUNDERSON LAW FIRM

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 13 _____

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the law office of GUNDERSON LAW FIRM, and on the 30 day of September, 2022 I electronically filed the **MOTION TO VACATE SETTLEMENT CONFERENCE** and a copy will be electronically mailed by the United States District Court-District of Nevada through CM/ECF to the following:

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10 Pursuant to FRCP 5(b), I further certify that I am an employee of the law office of
11 GUNDERSON LAW FIRM, and on the 30 day of September, 2022, I deposited for mailing in
12 Reno, Nevada a true and correct copy of the foregoing **MOTION TO VACATE SETTLEMENT**
13 **CONFERENCE**, to the following:

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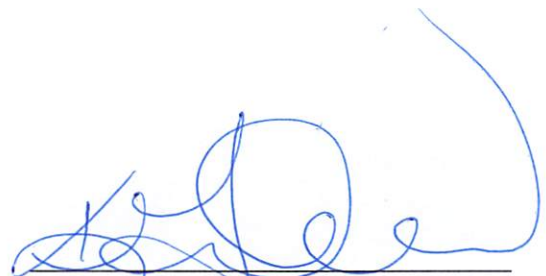
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Kelly Gunderson

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	August 2022 email chain	4
Exhibit "2"	August 15 email	1
Exhibit "3"	August 2022 email chain	11
Exhibit "4"	September 1 email	11
Exhibit "5"	Emails from September 1 and 2	13
Exhibit "6"	Email chain	17
Exhibit "7"	September email chain	3
Exhibit "8"	Declaration of Robert Leberman	2
Exhibit "9"	September 11, 2022	4
Exhibit "10"	Gunderson email on September 11, 2022	3
Exhibit "11"	Gunderson email dated September 14, 2022	1
Exhibit "12"	Gunderson email dated September 20, 2022	5
Exhibit "13"	September 22, 2022, email chain	2